IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6555 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

RAJESH SHANTILAL TRIVEDI

Appearance:

MS SEJAL K MANDAVIA for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 23/03/2000

ORAL JUDGEMENT

By this petition, the petitioner has challenged the judgment and award dated 24.7.1997 passed by the labour court, Bhavnagar in Reference (LCB) No. 192 of 1992 whereby the labour court has directed the petitioner

to reinstate the respondent workman with full back wages by deducting an amount of Rs. 800/- from the full back wages. The facts of the present petition, in short, are that the respondent was working with the petitioner as Gujarati Typist with effect from 1st March, 1990 against the vacant post. The respondent was appointed by periodical appointments. Initially, he was appointed from 1st March, 1990 to 31st October, 1990 and, thereafter,he was continued in service w.e.f.1st November, 1990 to 3rd January, 1992 on HR Basis without any terms and conditions and was receiving fixed salary of Rs. 450/p.m. The meaning of "H.R." given by the petitioner is "Hand Receipt". Inshort,the respondent was in service with effect from 1st March, 1990 to 3rd January, 1992 and that he had completed 240 days' continuous work within 12 months preceding thedate of terminationof his services. The respondent workman had challenged the terminationbefore the labour court Bhavnagar by filing the aforesaid reference which was allowed by the labour court by aforesaid impugned award which is under challenge before this court.

I have perused the impugned award and the papers brought on record. Before the labour court, the statement of claim was filed by the respondent vide Exh. 5 and reply thereto was filed by the petitioner at Exh. 6. Documentary evidence was produced by the respondent before the labour court vide Exh. 8 and the petitioner had also produced certain documents vide Exh. 7. Before the labour court, the respondent was examined on oath vide Exh. 10 and witness for the petitioner was examined at Exh. 14. Before the labour court, written arguments were submitted by the respondent vide Exh. 18. The labour court, after considering the documents on record and also after appreciating the arguments from both the sides, came to the conclusion that the provisions of section 25F of the Industrial Disputes Act, 1947 were violated by the petitioner. The contention of the workman as regards breach of section 25H of the ID Act was negatived by the labour court. Thereafter, the labour court considered the question of back wages and directed reinstatement of the respondent with full back wages after deducting Rs.800/- from the back wages which was earned by the respondent.

This court,while admitting this petition on 8.9.1997, has granted the ad interim relief and has stayed the operation of the impugned award qua back wages alone. Thereafter, on 12.12.1997, interim relief in terms of paragraph 10(B) was granted by this court subject to the provisions of section 17B of the Industrial Disputes

Act, 1947.

Today, when the matter was taken up for hearing, learned advocate Ms.Mandavia has submitted that initially, the respondent was appointed on periodical basis for the period from 1st March,1990 to 30th October, 1990 and thereafter fhrom 1st November, 1990 to 3rd January, 1992, on H.R. (Hand Receipt) Basis. According to her, therespondent being the daily wager is not entitled to any benefitof the provisions of section 25F of the Industrial Disputes Act and there is no any necessity to comply with the said provisions in so far as the respondent, daily wager is concerned. She has further submitted that if the deposition of the respondent is minutely scanned, it would appear that the respondent has not deposed that after termination of his service, he has made any sincere efforts to secure the job and, therefore, the respondent is not entitled to any back wages for the intervening period and the labour court has erred in awarding back wages for the intervening period.

On the other hand, Learned advocate Mr.Mishra appearing for the respondent workman has submitted that admittedly the "daily wager" is a "workman" within the meaning of section 2(s) of the Industrial Disputes Act. Accordingly, since the respondent workman has completed 240 days' work continuously, he is entitled to the benefits of section sec.25F of the Industrial Disputes Act,1947. Hehas pointedout that the number of working days have been given at page 32 and has submitted that taking intoconsideration the working days, the respondent has completed 240 days' work within 12 months preceding the date of termination and,therefore, the petitioner was required to comply with the provisions of section 25F of the ID Act and since the respondent's service was terminated without complying with the said provisions, the labour court was justified in arriving at the conclusion that the petitioner has violated the provisions of section 25F of the ID Act. According to him, the labour court has come to such conclusion after appreciating the facts and circumstances of thecase and also the provisions of law in that regard and, therefore, such findings of fact should not be disturbed by this court in exercise of the powers under Article 226/227 of the COnstitution of India.

Thereafter, learned advocate Ms. Mandavia has submitted that as per the evidence of the witness for the petitioner Shri Bipin Parmar,Executive Engineer, the post of typist was sanctioned for the period ofone year and

from 1992, said post was abolished and till this date, it is not sanctioned by the deparptment. She has, therefore, submitted that the question of reinstatement is not arising at all and the labour court has erred in directing the petitioner to reinstte the respondent workman on his original post with full back wages.

Learned advocate Mr.Mishra for the respondent has submitted that recently, in case of MCD versus Pravinbhai, reported in 1998 (2) LLJ 674, the apex court has taken the view that the daily rated workman discharged from service is also entitled to the benefit of section25F of the ID Act. He has also relied upon the decision of the division bench of this court in caseof Gram Panchayat, Dharampur versus Sharadkumar D.Acharya, reported in 1994 (1) GLR 579 and has submitted that the question of abolition of post was considered by this court in para 6 of the said decision. I have perused the said decision. In the said decision, it was the contention of the panchayat that since the post in question was abolished, reinstatement could nothave been granted. In the said decision, it has been observed that since the panchayat has not fulfilled the requirement of section 25F, the termination is illelgal and void and he is to be reinstated and if necessary, thepost has to be created to comply with the order of reinstatement. It has also been observed that it is not open for the employer to contend that since the employer had abolished the post,order of reinstatement could not be complied with.

I have considered the submissions made by the learned advocates for the parties. I have also perused the impugned award and the documents on record. I have also kept in view the decisions cited before this court during the course of hearing. On bare perusal of the appointment order of the respondent for the period from 1st March, 1990 to 31st October, 1990 which was shown to me by Ms. Mandavia, it appears that there was condition in the said order that as and when regular candidate is available, services of the respsondent workman will be terminated. Learned advocate Ms. Mandavia was not able to point out before this court as to when the regular candidate was available to the petitioner and when such rhegular candidate was appointed by the petitioner. On the contrary, from the evidence on record, it appears that the post in question was abolished in 1992 but prior thereto, before abolition of the post in question, service of the respondent workman was terminated on 3rd January, 1992 and therefore, inthe instant case, it canot be contended that the service of the respondent was

terminated on account of abolition of the post in question since at the time of termination of services of the respondent, the post in question was existing. The petitioner has not been able to justify the termination of service of the respondent workman. Further, on 3.1.1992, therespondent's service was terminated and on 11.1.1992, the petitioner had given an advertisement for the very same work. Therefore, it can be said that the work was very much available at the relevant point of time and yet the service of the respondent was terminated without complying with the provisions of section 25F of the Industrial Disputes Act. The question of non compliance of section 25F is not in dispute but it is the caseof the petitioner that the said provisions are not attracted in this case. It is also not the case of the petitioner that the respondent had not completed 240 days' work continuously preceding the date of termination of his service. Admittedly, no retrenchment compensation, notice or notice pay in lieu of the notice was given to the respondent at the time of termination of his service. Learned advocate Ms. Mandavia has submitted that in view of the interim orders passed by this court,the petitioner has paid in all an amount of Rs. 12929.50 to the respondent for the wages undersection 17B of the ID Act for the period from 30.4.1997 to 30.11.1998 after deducting Rs. 800.00 as per the direction of the labour court and thereafter, each month, the respondent is being paid the amount as per sec.17B of the ID Act. Learned advocate Ms. Mandavia has further submited that the respondent has worked for a period of about 2 years prior to the termination of his services and the petitioner is a public body, therefore, the petitioner should not be directed to pay full back wages to the respondent for the interim period as, otherwise, it would cause undue burden on the public exchequer. In reply to this submission, learned advocate Mr. Mishra has submitted that he is leaving the question of back wages for the intervening period at the discretion of this court but he has submitted that in anyc ase, this court should not disturb the findings of reinstatement.

In view of the aforesaid submissions and also in the facts and circumstances of the case, I am of the view that the labour court is justified in holding that the termination is bad and illegal for want of compliance of section 25F of the ID Act. However, in so far as the back wages are concerned, I am of the view that the respondent is not entitled to full back wages. Prior to the termination of his service, he has worked for about two years and the theperiod from the date of termination

of his service till the date of award comes to about five years. Therefore, considering the total service rendered by the petitioner prior to termination of his service and the period from the date of termination of his service till the date of the impugned award, as well as considering the fact that there is only procedural flow, I am of the opinion that it would be just and proper if the award impugned herein is modified qua back wages by directing the petitioner to pay 50% of the back wages for the interm period. To that extent, the impugned award is required to be modified. Hence the following orderis passed.

Petition is partly allowed. The award impugned herein is modified in so far as it relates to back wages. Accordingly, the petitioner is directed to reinstate the respondent workman in service with continuity of service and with 50% of the back wages for the intervening period.

In the larger interest of justice, the petitioner is directed to implement the award as modified by this court by reinstating the respondent in service within two months from the date of receiptof certified copy of this order. The petitioner is further directed to pay 50% of the back wages for the intervening period from 3.1.1992 til the date of the award passed by the labour court within three months from the date of receiptof certified copy of this order. In calculating such back wages, the petitioner will take into account all the revisions that have taken place from time to time and will consider the same as if the petitioner was in service and was never terminated and will thus consider and calculate the amount of back wages and will pay fifty per cent thereof to the respondent within the period stipulated above.

The petitioner shall also pay full wages to the respondent workman from the dateof the award 30.4.1997 till the date of his reinstatement in service within three months from the dateof receiptof certified copy of this order after deducting the amount which has been paid by the petitioner to the respondent for complying the provisions of section 17B of the ID Act as per the interim orders passed by this court.

Rule is made absolute in terms indicated hereinabove with no order as to costs.

23.3.2000. (H.K.Rathod,J.)

Vyas